

### **REMARKS**

The above listed claim amendments along with the following remarks are fully responsive to the Office Action set forth above. In the Office Action, the Examiner has rejected claims 18, 32-35, 37 and 39-41.

Without acquiescing, the Applicant has amended claim 18 to expedite prosecution of the case. Additionally, claim 35 is hereby canceled. Claims 18, 32-34, 37, and 39-41 remain pending. Reconsideration and allowance of claims 18, 32-34, 37, and 39-41 in view of the amendments and the accompanying Remarks is respectfully requested.

### **Claims Rejections – 35 USC § 103**

Claims 18, 32-34, 37 and 39-41 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 6,224,540 (“Lederman”) in view of U.S. Patent 5,336,253 (“Gordon”). The Office Action asserts that since both the *Lederman* and the *Gordon* patents apply a therapy to a diseased heart, it would have been obvious at the time the invention was made to modify the device of *Lederman* as per the teachings of *Gordon*.

The Applicant respectfully disagrees with this position, and reserves the right to present additional arguments and evidence to refute the Office Action’s position that it would have been obvious to combine the teachings of the *Lederman* and *Gordon* patents in the manner asserted. To expedite prosecution, however, the Applicant has amended claim 18. Claim 18 recites a method for treating cardiac disease of a heart, the method comprising placing a device on the heart, the device comprising compliant and elastic biocompatible material. Support for the amendment can be found, for example, at page 12, line 24 – page 13, line 2, and also in commonly assigned U.S. Patent 5,702,343, the entire disclosure of which is incorporated by reference at page 10, lines 27-29. The Applicant submits that the *Lederman* and *Gordon* patents, even if combined in the manner asserted in the Office Action, fail to teach or disclose the method recited in claim 18.

In particular, neither the *Lederman* patent nor the *Gordon* patent discloses, teaches, or suggests a method of treating the heart utilizing a device comprising compliant and elastic biocompatible material. Rather, the *Lederman* patent discloses a “girdle” 30 made up of

interlinked “plastic” rings that “are free to move in all directions without restraint, since none are physically connected to each other.” Col. 5, ll. 31-33. The stated purpose of the girdle 30 of *Lederman* is to “limit the maximum diastolic dimension of the heart.” See Col. 5, ll. 26-28. Additionally, Lederman’s girdle 30 “presents no systolic load to the contracting heart.” See col. 5, ll. 36-36. Nothing in *Lederman* suggests that either the “plastic rings” themselves or the girdle 30 as a whole are elastic or include an elastic material. To the contrary, the foregoing teachings from *Lederman* suggest, if anything, that the plastic rings and the girdle 30 as a whole are not elastic.

The claimed device has numerous advantages over the *Lederman* girdle 30. For example, the use of a device comprising compliant and elastic biocompatible material as recited in claim 18 applies surface pressure on the heart that varies as a function of the amount of dilation of the heart. This variable pressure can have the effect of reducing cardiac dilation to a certain point and then effectively stopping. The therapy provided by the claimed device is particularly efficacious when combined with the application of electrical therapy to the heart as recited in claim 18, and this combination is not taught or suggested by *Lederman* or *Gordon*.

For at least these reasons, the Applicant believes that claim 18, and also claims 32-34, 37 and 39-41 which depend from claim 18, are patentable over the prior art of record. The Applicant respectfully requests reconsideration and withdrawal of the rejections under 35 U.S.C. § 103(a).

### **Conclusion**

In conclusion, all pending claims are believed to be in condition for allowance. The Applicant respectfully requests that a Notice of Allowance be issued in this case.

Respectfully submitted,

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Dated: June 9, 2008